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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

21 CR 636 (JPC)

5 RICARDO CRUCIANI,

Conference

6 Defendant.

7 -----x

8 New York, N.Y.
9 February 15, 2022
10:00 a.m.

Before:

11 HON. JOHN P. CRONAN,

District Judge

12 APPEARANCES

13
14 DAMIAN WILLIAMS,

United States Attorney for the
Southern District of New York

15 BY: JANE KIM

16 Assistant United States Attorney

17 DAVID PATTON

FEDERAL DEFENDERS OF NEW YORK, INC.

18 Attorney for Defendant

19 BY: DANIEL HABIB

MARK B. GOMBINER

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(Case called)

DEPUTY CLERK: Counsel starting with the government, please state your name for the record.

MS. KIM: Good afternoon. Jane Kim for the government.

THE COURT: Good morning, Ms. Kim.

MR. GOMBINER: Mark Gombiner and Daniel Habib for Mr. Cruciani. And, Judge, Mr. Habib is in our appeals unit, and he was the one who basically did the response here, and, in that respect, I have to apologize to the Court when I ask Mr. Habib to do this. I neglected because I completely forgot that the Court had requested us to address certain specific cases, but Mr. Habib is definitely prepared to do that now.

THE COURT: Excellent. Thank you, Mr. Gombiner. And, Mr. Habib, it's good to see you.

MR. HABIB: Likewise, your Honor. My pleasure.

THE COURT: And good morning to Mr. Cruciani as well.

First of all, thank you for appearing on relatively short notice for this proceeding. As Mr. Gombiner just previewed, the purpose of today's proceeding is to address Mr. Cruciani's application that certain documentation submitted in support of his request for appointment of counsel under the Criminal Justice Act be filed *ex parte* and under seal. And the documents that we're talking about are the initial CJA form. I believe it's Form 23, which is the one-page financial affidavit

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1 used in most cases. And, here, it's dated November 29th, 2021.
2 And also a supplemental affidavit for Mr. Cruciani with an
3 appendix that I received initially under seal on January 26th,
4 2022. And that supplemental affidavit was submitted in light
5 of questions I had as to the defendant's financial eligibility
6 for a court-appointed counsel. It was for a few reasons,
7 including his former employment, various property that was
8 posted in connection with his release on bail, and that he
9 initially appeared with retained counsel.

10 So I've reviewed the supplemental submissions letter
11 from the Federal Defenders dated February 2nd, the government's
12 letter dated February 9th. And I thought it would be most
13 efficient to have this conference to discuss the application
14 and possibly resolve it as well.

15 Mr. Gombiner, let me start with what you just touched
16 upon. The government's submission addressed a few authorities;
17 the Second Circuit decision in *Harris* and *Suarez*,
18 Judge Furman's decision in *Avenatti*, I believe Judge Sweet's
19 decision in *Hilsen*, and the district CJA plan. Why don't I
20 give you and Mr. Habib a chance to orally respond to those
21 authorities, then?

22 MR. GOMBINER: Mr. Habib.

23 THE COURT: Thank you. And, Mr. Gombiner, expect us
24 to be done by 10:45. I know you have something after this.

25 MR. GOMBINER: Yes.

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1 THE COURT: But if we get close and you need to leave
2 and let Mr. Habib handle anything that remains --

3 MR. GOMBINER: That would be great. That would be the
4 most efficient way to do it. Thank you, Judge. I know
5 Mr. Habib can handle it. Thank you.

6 MR. HABIB: Thank you, your Honor. I appreciate it.

7 Let me address the questions that the Court posed at
8 the last appearance. I think the first one, which can be
9 addressed most easily, is Section VI(E) of the district CJA
10 plan, Section V of this district's CJA plan, which I have
11 brought copies, if the Court or the government wants, and they
12 indicate that the judicial conference guidelines are
13 incorporated by reference into this district's CJA plan.

14 THE COURT: Mr. Habib, you're welcome to stay seated
15 if you prefer. It might be easier with our masks. It's a lot
16 easier if the microphone is closer.

17 MR. HABIB: Okay. Thank you, your Honor.

18 Section V of this district's CJA plan says, quote,
19 representation pursuant to this plan shall be furnished to any
20 person financially unable to obtain adequate
21 representation...in the circumstances set forth in
22 18 U.S.C. 3006A, and in the guidelines promulgated by the
23 Administrative Office of the United States Courts...which are
24 incorporated by reference.

25 As was noted in our supplemental filing and that of

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1 prior counsel, those guidelines expressly provide that
2 documents submitted in connection with an application for CJA
3 counsel will be maintained under seal and disclosed neither to
4 the government nor to the public. And so in light of that
5 expressed incorporation of those guidelines, I think it would
6 be incorrect to interpret VI(E) to abrogate by implication
7 those incorporated guidelines.

8 What I think Section VI(E) is getting at is in the
9 circumstances where the government does come to learn of the
10 contents of materials submitted in connection with an
11 application, as for example, when a defendant chooses to
12 testify to his eligibility in open court, as the plan
13 contemplates, the government, as in *Branhart*, would be
14 precluded from using that material in its case and chief. I
15 don't think it can be read as broad disclosure authority.

16 The Court also asked Mr. Cruciani to address the
17 circuit's decision in *Harris* and *Suarez*. What I'll say is
18 neither decision is dispositive, as I think even Judge Furman
19 recognized in *Avenatti*, neither concerned an application such
20 as the application at issue here.

21 *Suarez* holds that there's a First Amendment interest
22 in CJA vouchers, but *Suarez* locates that interest in, quote,
23 the public's strong interest in how its funds are spent in the
24 administration of criminal justice and what amounts of public
25 funds are paid to particular private attorneys.

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1 The financial affidavit at issue here indicates
2 different interests. It doesn't reflect how much attorneys are
3 being paid, it doesn't reflect how much experts are being paid.
4 It indicates how much a single defendant that this Court has
5 determined to be entitled to CJA representation has and what
6 assets certain family members of his have.

7 That said, the First Amendment interests discussed in
8 *Suarez* can be fully accommodated through existing provisions of
9 the CJA. So, for example, Section 3006A(d)(4)(A) provides that
10 amounts paid to counsel shall be made available to the public,
11 and Subsection (e)(4) provides that amounts paid to experts and
12 other support services shall be made available to the public.
13 So those interests can be addressed without disclosure of the
14 financial affidavit.

15 It's also true in *Suarez* that the only countervailing
16 interest the defendant asserted was a prejudice to his trial
17 rights; that is, the defendant was concerned that disclosure of
18 the amounts that the public had financed for his defense might
19 prejudice his jury in his upcoming trial.

20 And so *Suarez* had no occasion to consider the
21 countervailing interest we've asserted here, which is the
22 financial privacy and personal privacy of Mr. Cruciani, and in
23 addition, innocent third-party family members discussed in the
24 financial affidavit.

25 I would also note that *Suarez* relies on the judicial

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1 conference guidelines to conclude that if disclosure would,
2 quote, unduly intrude on defendant's privacy, the disclosure
3 might not be warranted or that sealing would be appropriate.

4 THE COURT: I'm sorry. Forgive me. Why can't that be
5 achieved by redaction?

6 MR. HABIB: So, obviously, our fallback position would
7 be that redaction would be appropriate as to much of the
8 information in the affidavit, but I think before we get to that
9 point, before we begin redacting sort of line by line, I would
10 urge the Court to consider -- and I can make this point in
11 greater length in the course of presenting an affirmative
12 argument. But to consider, A, whether these materials are
13 judicial documents in the first instance and, B, whether
14 countervailing interests weigh against disclosure.

15 So in a sense, we may be arguing about degrees of
16 redaction, but we would urge that full redaction in this
17 situation is appropriate.

18 *Harris*, as I read *Harris*, and I understand that
19 Judge Furman read it more broadly than I'm about to propose,
20 but I read *Harris* as a case about adversary proceedings, not
21 about public disclosure.

22 *Harris* affirmed the termination of CJA counsel where
23 the defendant declined to demonstrate his eligibility in an
24 adversarial proceeding. He wanted an *ex parte* proceeding. And
25 Judge Furman reads *Harris* to say -- and, granted there's

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1 language in *Harris* that talks about our judicial system's
2 aversion to secret proceedings. But what I read *Harris* to say
3 is this is an adversarial process, and the government has a
4 role to play, and the government has a role to play in, as
5 appropriate, contesting financial eligibility. *Harris* does
6 not, by its own terms, discuss the First Amendment or the
7 common law presumption of access. Those considerations simply
8 aren't presented in the case.

9 In addition, the countervailing interest in *Harris*,
10 again, is not financial privacy of the defendant and third
11 parties; as here, it's the Fifth Amendment. *Harris* holds that
12 that interest can be reconciled through use immunity. It's not
13 the argument that Mr. Cruciani has pressed here.

14 THE COURT: And you're arguing that it should be
15 *ex parte*; not just sealed. You're seeking sealed, *ex parte*
16 treatment of the affidavit?

17 MR. HABIB: And I recognize that is the tougher part
18 of our position, in light of *Harris*. Except that I would say
19 *Harris* holds that *ex parte* presentation is inappropriate to
20 ensure adversarial testing. This Court has already determined
21 that Mr. Cruciani is eligible for counsel, so I'm not sure what
22 further role, barring the government's discovery of additional
23 financial information and adversarial process, would play in
24 this specific case.

25 As to Judge Furman's opinion in *Avenatti*, obviously,

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1 it holds against us. That said, it's entitled to persuasive
2 force only. But let me address the role of the judicial
3 conference guidelines in the context of that case.

4 This Court pointed out, as Judge Furman did, that the
5 guidelines can't supersede the First Amendment, and we agree
6 with that, obviously. But the guidelines aren't just policy
7 statements. They're promulgated pursuant to a statutory
8 delegation of authority, and that's at Section 3006A(h), as in
9 Harry, which directs the judicial conference to promulgate
10 regulations concerning the administration of the CJA. And, in
11 that sense, they absolutely can displace, for example, the
12 common law presumption of access. That's the purpose of
13 codified law, is to displace common law where deemed
14 appropriate.

15 THE COURT: Putting aside the First Amendment right to
16 access, if that didn't exist, would it be your view that a rule
17 promulgated or a rule promulgated pursuant to section 3006A(h),
18 that was inconsistent with the common law right of access would
19 prevail over the common law right of access?

20 MR. HABIB: Yes, your Honor. In the same way the
21 federal rules of evidence have the ability to displace common
22 law privileges, for example.

23 In addition, as to the Constitutional question, I
24 don't think this Court should assume that either the judicial
25 conference or the framers of the rule 49.1, the rules of

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1 criminal procedure and the drafters of the Advisory Committee
2 Notes, would likely disregard the First Amendment interests at
3 issue here. Indeed, the Supreme Court has said with respect to
4 the judicial conference that its rules are entitled to respect,
5 and Judge Weinstein made the same point in the case cited in
6 our papers.

7 In addition, the Supreme Court said in *Vaughan*, when
8 construing the meaning of the rules of criminal procedure, the
9 Advisory Committee Notes is entitled to weight. It's of
10 weight. And the Advisory Committee Notes clearly contemplates
11 that if the rule doesn't, by its own terms, provide for sealing
12 that rule 49.1(d) and (e) should be used to effectuate the
13 objective of shielding this information from public disclosure.

14 So I would say I take the Court's point that the
15 guidelines can't trump the Constitution, but I think they
16 absolutely can trump the common law, and I think they are
17 entitled even in the Constitutional analysis to very respectful
18 consideration because they reflect the considered judgment of
19 judges and players in the criminal justice system.

20 The Court also asked us to address Judge Sweet's
21 decision in *Hilsen*. I view *Hilsen* as a pretty straightforward
22 application of *Harris*. I don't see that as advancing the
23 analysis, although it certainly was, as was Judge Sweet's wont,
24 comprehensive.

25 Let me address the merits of Judge Furman's views in

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1 Avenatti. And I would say this: It's really a three-step
2 process. Is this a judicial document? If so, what weight is
3 afforded the presumption, and what are the countervailing
4 interests asserted?

5 We respectfully disagree with Judge Furman's
6 conclusion that this document is a judicial document. We urge
7 the Court to follow the First Circuit in that respect.
8 Judge Furman indicated it's an open question in this circuit
9 whether this specific document is judicial.

10 And I would just say without belaboring the point, a
11 CJA affidavit is I think far removed from what the circuit has
12 said is the core of judicial documents, which is case
13 adjudication. As the Court knows, Article III judges rarely
14 have occasion to review CJA financial affidavits, and the vast
15 majority of case, that's done by the magistrate on the day of
16 presentment.

17 Even in *Brown v. Maxwell*, the Second Circuit said that
18 even materials related to -- for example, for the management of
19 discovery or the presentation of evidence at trial via motions
20 *in limine* would be subject to a weaker presumption. This
21 document is farther removed still.

22 THE COURT: So I guess what I'm struggling with,
23 Mr. Habib, certainly, I understand your point that usually
24 often the defendant makes, but the case law seems to have
25 struck that whether something is a judicial document turns on

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1 whether the document is relevant to the performance of a
2 judicial function, which is defined to include the exercise of
3 supervisory powers.

4 The financial affidavits here were used by me to
5 decide whether your client is eligible for publicly funded
6 counsel. Even if that's not how the judicial function may
7 often be thought about in a day-to-day proceeding in this
8 courthouse, why isn't that relevant to my exercises for
9 supervisory powers?

10 MR. HABIB: I think the best thing I could say about
11 that, your Honor, is that as the First Circuit did, the
12 determination of CJA eligibility is more properly characterized
13 as an administrative rather than a judicial responsibility.
14 But as I said, I don't want to belabor that point.

15 Let me talk about interest balancing here because I
16 think we have certainly a stronger case there.

17 So, again, in *Avenatti*, as in *Harris*, the only
18 countervailing interest asserted was the Fifth Amendment, which
19 we haven't pressed here. *Avenatti* follows *Harris* by using use
20 immunity to reconcile those interests. We are asserting
21 different countervailing interests here. And so at the second
22 step, you not only weigh the strength of the presumption, which
23 if the Court concludes these are judicial documents, I think,
24 at best, the presumption would be at its weakest with respect
25 to these documents. And against that, we've asserted -- I want

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1 to assert a couple of interests; one, obviously, is the
2 financial privacy of Mr. Cruciani and the innocent third
3 parties who are discussed in the financial affidavit. As we
4 demonstrated in our prior supplemental filing, financial
5 privacy is routinely cited as a basis to justify sealing,
6 including by the Second Circuit in one of its *Amadeo* decisions.

7 In addition, I think there are profound
8 Sixth Amendment interests at play here. We touched on them in
9 our brief, but they are these. The Sixth Amendment entitles
10 any indigent defendant to the appointment of counsel upon
11 demonstration of eligibility.

12 If CJA affidavits are routinely disclosed to the
13 public, that's going to exert a significant chill on the
14 exercise of the Sixth Amendment right. In particular, it's
15 going to exert a chill because this matter is typically
16 adjudicated on the day of presentment, which as the Court knows
17 it is a busy day, it's a hectic day, defense counsel has met
18 its client for the first time, defense counsel has numerous
19 tasks on that day, including explaining the complaint,
20 attending the pretrial services interview, communicating with
21 family members to secure a bond, communicating with family
22 members to potentially identify property that can be used to
23 secure a bond, discussing with the prosecutor the conditions of
24 pretrial release order, appearing in the magistrate court for
25 the presentment, times the three or four or five cases that a

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1 defense lawyer might get on a duty date.

2 To layer into that process, the additional
3 complication of not only must you complete the financial
4 affidavit, but I must tell you that your answers are going to
5 be made public, not only to the prosecutor, but to the world,
6 would have, I think, Number One, a significant chilling effect
7 on the defendant's exercise of his rights, and Number Two,
8 serious consequences for the efficient administration of
9 justification in magistrate court.

10 If I can make the point more concretely, many of the
11 Federal Defenders' clients appear for presentment, and they
12 complete a financial affidavit that says that they essentially
13 have de minimis assets and significant debt. They may not be
14 working, they may have credit card debt, car debt, et cetera.
15 That's a lot of information for a person who's been arrested
16 for the first time maybe in his life, to disclose to the world
17 on what's probably the worst day of his life.

18 It would be extraordinarily difficult and add to the
19 already difficult task of appointed counsel on the day of
20 presentment to explain that process in addition to all the
21 other tasks counsel has on that day. And I don't think it's a
22 reach, and I don't think it's speculation to say that some
23 indigent defendants who are entitled – unquestionably,
24 factually entitled – to appointment of counsel will be
25 dissuaded from requesting it through shame or embarrassment or

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1 fear, or for example, the interests of third parties that they
2 would be required to disclose. For example, the financial
3 affidavit asks do you have dependents, and a dependent might be
4 a spouse or it might be a sibling or a parent. All those
5 things might be the source of reticence to assert their
6 Sixth Amendment right.

7 So I think in that respect, and returning, if I may,
8 to both the guidelines and the Advisory Committee Notes, when
9 this Court is weighing countervailing interests, I think it
10 should not only give respectful consideration to those
11 authorities on the question whether these are judicial
12 documents, but whether the interests of the defendant in
13 asserting his Sixth Amendment right, when he has it – that is,
14 when he's entitled to appointed counsel – and of the magistrate
15 court in processing the many cases they come across on a duty
16 day, recommend or rule according to which the defendant can
17 simply complete the affidavit quickly and candidly,
18 confidentially that the affidavit is being used for nothing
19 other than the determination of the appointment of counsel,
20 period.

21 I should also note that there will be cases in which
22 it would be ineffective assistance for defense counsel not to
23 talk about the strategic consequences of making a full
24 disclosure on a financial affidavit. And defense counsel is
25 particular in cases of financial crimes, and I take the point

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1 there's use immunity, but that's not the only -- you know, use
2 in case in chief is not -- barring use in case in chief is not
3 the same as barring use --

4 THE COURT: And I take your point that there may be
5 cases where that would be a stronger argument. There's not a
6 Fifth Amendment argument here, though.

7 MR. HABIB: We haven't pressed them on this case, no.

8 THE COURT: And your chilling argument, your argument
9 that if you chill the right to counsel, was that made before
10 Judge Furman or Judge Oetken in a similar way in *Correia*? Do
11 you know if that was made before either of those courts?

12 MR. HABIB: I don't know what arguments were made in
13 Judge Oetken's case, truthfully. I reviewed the papers in
14 Judge Furman's case. I don't think that argument was pressed.

15 Can I check and tell the Court? The Court can also
16 use PACER too. I don't know the answer, Judge.

17 THE COURT: Do you think it matters, given the posture
18 here, and that it is not a typical situation like you were just
19 describing, but rather we have a defendant who appeared with
20 three retained counsel, posted very sizable bail by posting, I
21 believe, three properties, and based on the allegations,
22 appeared for much of his life to have a high-paying job? Does
23 that factor in?

24 MR. HABIB: Those factors certainly warranted this
25 Court in making inquiry, which this Court did. But I think

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1 we're now addressing a distinct question, which is disclosure.
2 And, again, not only did this Court make inquiry, but this
3 Court made a determination. So I think the interests reflected
4 by the factors the Court just mentioned have been addressed.

5 I think that's what I had to say, but I'm happy to
6 answer the Court's questions.

7 THE COURT: Thank you. I think you answered --

8 MR. HABIB: If I could make one more point, your
9 Honor, which is specific to this case.

10 The circuit has indicated that whether documents are
11 judicial is an inquiry that is often made on a categorical
12 basis, right? That is to say, is a motion for summary judgment
13 a judicial document or not, and sort of the case-specific
14 considerations are addressed at the balancing stage.

15 At the balancing stage here, we have what this Court
16 determined was appropriate, was to order Mr. Cruciani to
17 complete, under penalty of perjury, an affidavit that is far
18 more detailed than the CJA Form 23, and that was appropriate.
19 The Court was discharging its statutory responsibility to
20 assess financial eligibility.

21 That said, the privacy implications here are quite
22 different than with respect to a one-pager. There's much more
23 information presented in Mr. Cruciani's affidavit. In
24 addition, there's information that pertains to his health that
25 I'm sure the Court observed.

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1 And so the privacy interests here are much greater
2 than those that were at stake in *Avenatti*; not just because the
3 financial affidavits were less detailed in *Avenatti*, but
4 Mr. *Avenatti* was ill-positioned to complain about violations of
5 his privacy. And, in addition, the government had conducted a
6 fairly thorough investigation of his finances, as Judge Furman
7 pointed out, so that his financial privacy interests were
8 minimal, given that investigation, and I'm not sure that's the
9 case here.

10 THE COURT: And when going back to your argument that
11 the presumption is weaker in this context, how does the
12 Sixth Amendment right to counsel come into play here? In other
13 words, the determination that needs to be made based on the
14 financial affidavit goes to an extremely significant
15 Constitutional right, and that Constitutional right is
16 extremely significant, but the right to counsel is undoubtedly
17 significant both to the defendant and also to the public. How
18 does that come into play in assessing whether the presumption
19 is strong or weak?

20 MR. HABIB: I think it comes into play in the
21 following way: That a categorical rule, to the extent one is
22 adopted, should, to the greatest extent possible, unburden the
23 exercise of the Sixth Amendment right. That is to say, any
24 rule that could dissuade a defendant from asserting his
25 Sixth Amendment right or resulting him foregoing an available

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benefit under the Sixth Amendment should be disfavored.

Rather, the rule that's appropriate in this context is one that encourages candid disclosure and an accurate determination of eligibility above all.

And in the specific context of financial privacy, which is a value that many Americans hold dear, that balance should be struck in favor of nondisclosure to encourage frankness throughout the evaluation of the application.

THE COURT: Thank you, Mr. Habib.

Ms. Kim, let me turn to you. I guess I'll start with anything you wish to respond to that Mr. Habib just raised.

MS. KIM: Sure, your Honor. Thank you.

I will try not to repeat what is in our submission, but just responding to some of defense counsel's arguments:

With respect to the CJA plan and its incorporation of judicial policy, by reference, of course, neither the CJA plan nor the judicial policy are binding, and the precedent set by the Second Circuit certainly trumps here.

As Mr. Habib has said, where there's a tension between a Constitutional right and judicial policy, the Constitution also here prevails. And it is worth noting that the defense has addressed the analysis under common law, but under the First Amendment, there's an even higher burden that's placed on the defense in weighing interests of the defendant versus public access under the First Amendment.

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1 In terms of *Suarez*, which is a First Amendment case
2 and touches upon common law, Judge Furman addressed *Suarez*, and
3 explained that there is actually even more of a reason in cases
4 involving CJA financial affidavits versus the types of
5 documents that were at issue in *Suarez*, and the reason why
6 there's more of an interest in public access to financial
7 documents than even those in *Suarez* is because they, of course,
8 play a critical role in the Court's determination of the
9 defendant's Sixth Amendment right to counsel, for
10 court-appointed counsel.

11 The documents that are at issue in this case are
12 subject to penalty of perjury and are in the context of a
13 motion that's before the Court.

14 I think what is important to sort of focus on in this
15 case is the heart of the matter; first, the fact that the
16 Second Circuit has held that these types of questions should be
17 aired in adversarial proceedings. And the defense has conceded
18 that the government has a role to play here, but the government
19 can't really play a role because we haven't seen any of the
20 defendant's financial materials, so we can't take a position or
21 potentially correct something that may be incorrect.

22 In *Avenatti*, Judge Furman explained that the
23 adversarial proceedings are particularly important, because
24 they discourage perjury, they assist the Court in its judicial
25 function, and they ensure that the decision that's ultimately

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1 reached is one that's weighed and considered based on facts and
2 potential challenges to those facts.

3 The second sort of important question at the heart of
4 the matter is the fact that these documents are of public
5 importance. A member of the press has already written in and
6 asked for access to the documents on two occasions. And the
7 reason why public importance and public access is important in
8 this case is because public access assures that these
9 procedures are approached in a fair and transparent manner.

10 I think there's a public question as to how formally,
11 sort of wealthy individuals, wealthy defendants, once they
12 appear in federal court, move for court-appointed counsel, and
13 that has been commented on in the press in the context of
14 *Avenatti* and also in this case. And so I think there's a
15 public question of how are tax dollars being spent. And in
16 that sense, there's an importance in public access to these
17 documents.

18 In terms of the chilling effect that the defense has
19 alluded to, in this particular case, it seems that ensuring
20 that there's an adversarial process and there's public access
21 to these documents would further ensure that the contents of
22 the documents are accurate, because they could potentially be
23 challenged by the government and information that the
24 government has and/or by members of the public.

25 The policy arguments, I'm not sure if Judges Furman

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1 and Oetken had addressed sort of the day-of presentment
2 arguments, but as the Court noted, this particular case is
3 distinguishable because there has been a question here and a
4 concern about the defendant's financial eligibility, given his
5 past practice as a physician and the multiple properties that
6 he had purchased before he was charged in this case.

7 And so, here, the defendant is not relying on the
8 Fifth Amendment to advocate for sealing and *ex parte* filing of
9 these documents. He has not made a Constitutional claim. He's
10 making a claim of privacy. And we haven't seen the document so
11 we can't offer potential redaction suggestions, but it appears
12 that those third-party privacy concerns could be addressed
13 through redactions.

14 THE COURT: Why should this case be treated
15 differently than the normal criminal case? I mean, I'm sure
16 right now today in magistrate court a number of defendants will
17 be signing financial affidavits, and none of those one-page
18 affidavits are likely to be publicly filed or publicly
19 available. Why should this be different?

20 MS. KIM: Your Honor, this case is certainly different
21 because the defendant appeared initially with retained counsel.
22 He has retained counsel and is able to pay retained counsel in
23 other matters. And his history shows that he, at one time, had
24 the financial assets to, for example, purchase property, to
25 obtain retained counsel, to live a comfortable lifestyle. And

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1 he was a practicing physician holding esteemed positions at
2 various medical institutions for years and years.

3 These are points that the Court touched upon at our
4 last proceeding. But this case is distinguishable because
5 there is a question of, for the public, how a defendant like
6 Mr. Cruciani, who seems to have amassed certain wealth and
7 assets over the last couple of decades could be financially
8 eligible for court-appointed counsel.

9 I think there's a second question for the Court, which
10 the Court raised when the motion was made for court-appointed
11 counsel of whether or not the defendant has certain assets and
12 actually is eligible for court-appointed counsel given his
13 financial background, and so I think the difference is, here,
14 there are certain defendants on the day of presentment who
15 defense counsel have said have likely de minimis assets and not
16 very much to disclose. There's also a presentence report that
17 comes out the day of the presentment as well, and so there's
18 less of a question of whether or not those defendants are
19 eligible for court-appointed counsel, whereas here, there are
20 concerns and there are open questions both for the Court and
21 for the public.

22 THE COURT: Ms. Kim, what's the government's view as
23 to whether if the financial affidavit were unsealed and
24 provided to the government, whether the government would be
25 permitted to use any of that in a case in chief? In other

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1 words, do you read *Harris* as essentially saying the government
2 cannot use this? There needs to be some degree of use immunity
3 here.

4 MS. KIM: Certainly. Based on Second Circuit
5 precedent, it appears the government would not be able to use
6 the defendant's financial affidavits in its case in chief,
7 unless it's a case for perjury or false statements.

8 THE COURT: Okay. Thank you. Mr. Habib, anything
9 further?

10 MR. HABIB: May I make a few brief points, your Honor?

11 First, in this case, the eligibility determination has
12 been made. This Court reviewed the affidavit which set forth
13 in excruciating detail why Mr. Cruciani is unable to retain
14 counsel at this juncture. It was said in public, so I would be
15 at liberty to repeat it here, that his assets have been
16 substantially depleted over the course of the past. four and a
17 half years as he has defended litigation in multiple other
18 jurisdictions.

19 As I think Ms. Macedonio pointed out at a prior
20 hearing, he spent approximately \$1.4 million to pay retained
21 counsel in other cases, and that's why, presumably, this Court
22 concluded he's entitled to counsel here.

23 THE COURT: And I realize you're not counsel, neither
24 you nor Mr. Gombiner were counsel at that point, but granted,
25 without the level of detail in the second affidavit, isn't a

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1 lot of it out of the bag from that proceeding?

2 MR. HABIB: Come again, your Honor?

3 THE COURT: Isn't a lot of the information out there
4 from that proceeding?

5 MR. HABIB: From prior -- for what?

6 THE COURT: I'm sorry. I think it was
7 December 2, 2021, where this issue was first raised, certainly
8 with nowhere close to the level of detail in the January 6, I
9 believe, affidavit. But to some extent, weren't some of these
10 issues aired in open court?

11 MR. HABIB: Obviously, to the extent an issue has been
12 aired in open court, the privacy interests have dissipated.

13 The second point I'd like to also make is with respect
14 to accuracy. I'd say two things. One, I think in the vast
15 majority of cases, the knowledge that a financial affidavit is
16 going to be publicly disclosed is going to harm rather than
17 hurt the accuracy determination. To put it very concretely,
18 Mr. Gombiner and I many times at magistrate court will go
19 through a financial affidavit, and we'll learn a defendant has
20 substantial debt for maybe embarrassing reasons, like a
21 gambling debt or a credit card debt or supporting an unemployed
22 family member. And I can easily imagine why a defendant would
23 not want to put that information before the public on the day
24 of his arrest.

25 In addition, there are significant checks on the back

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1 end that ensure a proper determination.

2 So, for example, there is in connection with the
3 preparation of a presentence report, there are going to be
4 financial disclosures that are going to be sought in a case
5 where there's the possibility of forfeiture or fine or
6 restitution. Those disclosures are going to be material there.
7 The government, of course, is investigating as the case
8 progresses, and the government may come into possession of
9 information that calls for the defendant's financial
10 eligibility into question.

11 All of those sources of information can be brought to
12 bear retrospectively. And, by the way, pursuant to 3006A(f)
13 the Court can see recoupment if it's determined that
14 appointment of counsel was inappropriate.

15 Of course, the financial affidavit is also prepared
16 under penalty of perjury, which is a serious oath and a serious
17 obligation that dissuades defendants from untruthful
18 representations.

19 Finally, I would say, I am pleased that Ms. Kim
20 recognizes that under *Harris* the government would be precluded
21 from using this material in its case in chief. As I've alluded
22 to earlier, that's not the only use that this information could
23 be put. It could be used to develop investigative leads, and
24 it could also be used to identify assets that are subject to
25 forfeiture and restitution and potentially to seizure prior to

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1 an adjudication of guilt, and so those interests would not be
2 protected.

3 The last thing I'll say is Ms. Kim indicated that we
4 weren't making a Constitutional argument with respect to the
5 Fifth Amendment. That's true. We are very much pressing a
6 Constitutional argument wit with respect to the Sixth.

7 THE COURT: Let me also note for the record that
8 Ms. Kim alluded to an e-mail I received. The e-mails are two
9 correspondences in support of unsealing from Matthew Russell
10 Lee, who is with a media outlet called Inner City Press. The
11 first is dated January 10, 2022, and the second was dated
12 February 2, 2022.

13 The second submission specifically responded to the
14 Federal Defenders' submission earlier that day. As we learned
15 of these letters, because the government referenced them in
16 their submission, both letters were e-mailed to my chambers'
17 inbox but were automatically diverted to my junk mail folder.
18 So when I saw the government's submission, I was able to dig
19 them out, and I have reviewed them.

20 While Inner City Press has not formally moved to
21 intervene and is not a party in this case, I have considered
22 both letters in connection with today's proceeding. By and
23 large, many of the arguments in those letters are in line with
24 the arguments presented by Ms. Kim on behalf of the government
25 in support of disclosure and unsealing.

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1 Does either counsel have any objection to me putting
2 those letters on the docket? Ms. Kim?

3 MS. KIM: No, your Honor.

4 MR. HABIB: No, your Honor.

5 THE COURT: I will do so most likely later today.

6 All right. Let me turn now to my ruling on this
7 matter. And I thank the parties for their excellent written
8 submissions and very thorough and helpful argument today.

9 In addition to the parties' submission, I have
10 reviewed the relevant case law, both in this circuit and out of
11 this circuit, and this district's CJA plan.

12 With respect to the specific facts presented here in
13 this case, I agree with the weight of authorities in the
14 Second Circuit on this issue, and deny the application to file
15 the defendant's November 29, 2021 and January 6, 2022 financial
16 affidavits under seal and *ex parte*.

17 I am mindful of many of the issues raised by Mr. Habib
18 and Mr. Gombiner, and I will permit defense counsel to propose
19 redactions to those affidavits, especially as to the January 6
20 affidavit, which was quite detailed.

21 I will now state my findings.

22 The Criminal Justice Act mandates the appointment of
23 counsel for any person charged with a felony offense who is
24 financially unable to obtain adequate representation. That's
25 at 18 U.S.C. Section 3006A(a).

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1 Before a judge may appoint counsel under the CJA. The
2 Court must conduct an inquiry into whether the defendant is
3 financially unable to obtain counsel. The burden is on the
4 defendant to show his or her financial eligibility for
5 court-appointed counsel. *United States v. Harris*, 707 F.2d
6 653, 660 (2d Cir. 1989).

7 Now, in this district, typically, this inquiry entails
8 a judge, usually a magistrate judge on duty that day,
9 considering financial information provided by the person
10 seeking appointment of counsel in the form of a sworn
11 affidavit. Sometimes that may be under oath in open court
12 before the judge.

13 Now, it is well-established that there is a qualified
14 right of access to criminal proceedings under the
15 First Amendment. One of many cites for that would be
16 *Richmond Newspapers v. Virginia*, 448 U.S. 555, 580 (1980).
17 This includes a right of access to pretrial proceedings and to
18 certain documents filed in connection with criminal
19 proceedings. *Hartford Courant v. Pellegrino*, 380 F.3d 83, 91
20 (2d Cir. 2004).

21 And as I've discussed, there is also a common law
22 right of access to judicial documents, and I want to give a
23 cite for that, one of the main cases in this circuit on this
24 topic is *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3s 110, 119
25 (2d Cir. 2006).

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1 So let me start with whether Mr. Cruciani's financial
2 affidavits are judicial documents to which the presumption of
3 access applies, and I find that they are.

4 The Second Circuit has broadly defined that a judicial
5 document is a document that is relevant to the performance of
6 the judicial function and useful in the judicial process. And
7 for that, *United States v. Amadeo*, 44 F.3d 141, 145 (2d Cir.
8 1995). A document is relevant to the performance of the
9 judicial function if it would reasonably have the tendency to
10 influence a district court's ruling on a motion or in the
11 exercise of its supervisory powers. And a cite for that is
12 *Brown v. Maxwell*, 929 F.3d 41, 49 (2d Cir. 2019).

13 Judge Furman recently found in the *Avenatti* case, the
14 financial affidavits are relevant, indeed critical, to the
15 appropriate inquiry a court is statutorily mandated to conduct
16 when tasked with determining if a criminal defendant is
17 financially eligible for appointment of counsel at public
18 expense. That's *United States v. Avenatti*, 2021 WL 3168145, at
19 *6, from Judge Furman's decision from July 27, 2021.

20 And I similarly conclude that the determination of
21 whether a defendant is eligible for appointment of counsel
22 under the Criminal Justice Act is a judicial function and
23 constitutes an exercise of a court's supervisory powers. And
24 the financial affidavits submitted in this case by Mr. Cruciani
25 are plainly relevant to my performance of that function.

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1 I therefore find there's a qualified First Amendment
2 right of access to the financial affidavits. Various other
3 decisions support this conclusion. Some are very much on
4 point, like Judge Furman's decision in *Avenatti*, some are maybe
5 not directly on point, but certainly extremely instructive.

6 Other cases that are more on point, *United States v.*
7 *Correia*, a November 12, 2020 decision from Judge Oetken, that's
8 at 2020 WL 6683097, Judge Oetken there held that the
9 First Amendment right of access and the common law right of
10 access applied to financial information declarations in
11 connection with the defense counsel's motion to be relieved.
12 And I note in Judge Oetken's observation in *Correia* that it is
13 difficult to see why the financial affidavits at issue in
14 determining financial eligibility depart from the judicial
15 documents associated with criminal pretrial proceedings as to
16 which the Second Circuit previously recognized the
17 First Amendment right of access. And that's at page 2 of that
18 decision.

19 To that end, the Second Circuit in *Harris* determined
20 that proceedings regarding a defendant's financial eligibility
21 for court-appointed counsel should not be held *ex parte* because
22 that would be manifestly conceptually incompatible with our
23 system of criminal jurisprudence. That's at 707 F.2d at 662.
24 The court in *Harris* observed that while Congress obviously knew
25 how to provide for an *ex parte* proceeding when it seemed

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1 appropriate, and there, specifically, it mentions for services
2 other than counsel, and ensuring that a defense is not
3 prematurely or ill-advisedly disclosed, Congress did not do so
4 in the context of appointment of counsel.

5 And in *Suarez*, the Second Circuit held that there's a
6 First Amendment right of access to CJA forms on which judicial
7 officers have approved payments to attorneys or to others who
8 provided expert or other services to the defendant in that
9 case, such as investigators, interpreters, computer experts.
10 *United States v. Suarez*, which was a 1989 Second Circuit
11 decision, 880 F.2d 626. And in *Suarez*, I should note this was
12 in the context of payment that had been approved.

13 I reviewed the First Circuit decision in *In re Boston*
14 *Herald, Inc.*, 321 F.3d 174, on which the defense relies in
15 support of this argument that a financial affidavit is not a
16 judicial document to which the presumption of access applies.

17 Of course, that decision is not binding on me, and
18 after reviewing the contrary case law by courts in this
19 circuit, I find those decisions, including the ones I just
20 mentioned, more persuasive. I'm not inclined, therefore, to
21 adopt the First Circuit's reasoning in *Boston Herald*.

22 As Mr. Habib noted, that is the first step. Because I
23 find that the financial affidavits at issue are subject to the
24 right of public access under the First Amendment, so the
25 affidavits may be kept under seal only as higher value in the

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1 First Amendment framework so demand. And that requires in my
2 view and consideration of the specific facts of the case,
3 applying that framework to the specific facts of this case, I
4 find that any presumption has not been overcome.

5 I am mindful of the arguments raised about potential
6 chilling effect, the Sixth Amendment right. I don't think that
7 is a particularly strong concern in this case, but in any
8 event, I believe that concern can be addressed by appropriate
9 redactions, which I will turn to in a moment. But I do believe
10 there are compelling reasons for why the financial affidavits
11 at issue should be unsealed and provided to the government.

12 The defense contends that any presumption here is weak
13 at best because the financial affidavits are an ancillary
14 document that concern only the determination of Mr. Cruciani's
15 CJA eligibility, and that there are countervailing privacy
16 interests of Mr. Cruciani and his family and their personal
17 financial information, and those countervailing interests are
18 strong.

19 I'm not convinced that the presumption here is weak.
20 I think it is relatively strong. The Criminal Justice Act
21 anticipates the involvement of a United States magistrate judge
22 or the court in nearly every phase of the appointment process,
23 including the determination of whether appointment of counsel
24 is appropriate. That is from the act itself at 18 U.S. Code,
25 Section 3006A(c). The determination of whether a criminal

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1 defendant is eligible for appointment of counsel under the
2 Criminal Justice Act directly implicates that defendant's
3 Sixth Amendment right to effective assistance of counsel, which
4 is significant.

5 The defense has argued that Mr. Cruciani's financial
6 privacy is at jeopardy, and here it's at jeopardy because he is
7 indigent, and under the government's view, to avail themselves
8 of their Sixth Amendment rights, poor defendants – and only
9 poor defendants – must surrender their privacy. I do not read
10 the government's submission to go that far or to suggest such a
11 view, nor do I endorse such a view.

12 But applying the precedent in this circuit, it does
13 require me to balance Mr. Cruciani's privacy interests and the
14 privacy interests of third parties against the interests of the
15 public in knowing how public funds are spent. *Suarez*, 880 F.2d
16 at 632.

17 Going back to what I said before about looking at the
18 specific facts of this case, in this case, I think the public's
19 interest is strong, given that Mr. Cruciani and his wife were
20 both practicing physicians, they own multiple properties,
21 Mr. Cruciani agreed to a \$2 million personal recognizance bond
22 secured by three properties and multiple co-signers, and he
23 initially proceeded in this action with three retained counsel.

24 I do pause to note what was discussed toward the end,
25 as the Second Circuit indicated in *Harris*, this holding should

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1 not be read to mean that the government may use Mr. Cruciani's
2 affidavit against him as part of its direct case.

3 If there were to be any use of anything in the
4 affidavit, there would certainly need to be additional briefing
5 on that issue. It sounds like that is not something that needs
6 to be addressed today.

7 But going back to the question of the privacy
8 interests, while I deny the application to file the entire
9 financial affidavits under seal and *ex parte*, I do recognize
10 there may be privacy interests to third parties to protect,
11 including of family members, particularly on account of the
12 nature of the second affidavit, which was quite detailed, as it
13 needed to be, because the original affidavit, which was just a
14 normal standard form, did not provide enough information for me
15 to assess financial eligibility – particularly, in light of the
16 information already before me that I just mentioned about
17 homeownership and the defendant's prior profession as well as
18 his prior retention of counsel, in this case and from what I
19 understand other cases as well.

20 And the government also seems agreeable to reasonable
21 redactions as expressed in its February 9th letter.

22 And Mr. Habib, I know it's not your preferred outcome,
23 but I assume the defense will want to propose redactions.

24 MR. HABIB: Yes.

25 THE COURT: So I will certainly consider redactions to

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1 account for any privacy interests. Initially, I'll ask the
2 parties to meet and confer about that. It's a bit unusual
3 since Ms. Kim won't be able to see what actually is being
4 redacted, but I'm hopeful that you can discuss general
5 categories of information and whether you agree they will be
6 appropriate for redaction.

7 And what I'm thinking, and I'm open to other
8 suggestions, but after you have that opportunity to meet and
9 confer, the defense can submit to me or file on the public
10 docket a redacted version of the affidavits and then unredacted
11 versions submitted to me *ex parte* and under seal. My
12 individual rules have procedures for doing so. And if there's
13 briefing in support of why certain redactions should be made,
14 that also should be handled in the same way.

15 If there are portions of the briefing that the defense
16 does not think should be filed publicly, the unredacted brief
17 could be submitted *ex parte* and under seal with a public
18 version filed in redacted form. After I received all of that,
19 I will review everything and determine whether the proposed
20 redactions, whether it be for the financial affidavits or any
21 written submissions should remain redacted.

22 Mr. Habib, I know this is not your case, but how much
23 time do you think will be sufficient for this your colleague to
24 speak with Ms. Kim and then propose redactions?

25 MR. HABIB: So I would obviously want to talk to

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1 Mr. Gombiner first. I personally will not be here next week
2 because it's my children's school vacation. So I think maybe
3 if we could have three weeks to do that. Is that reasonable,
4 your Honor?

5 THE COURT: I think given the size of the affidavit,
6 that might be reasonable. I do think it would be productive
7 for your colleague and Ms. Kim to discuss what should be
8 redacted. Is three weeks okay for the government?

9 MS. KIM: Yes, your Honor. And, actually, I will be
10 traveling for work, and so if we could possibly even have
11 four weeks, that would give us the opportunity to meet and
12 confer fully.

13 THE COURT: Sure.

14 MS. KIM: Just two quick questions. Was the Court
15 anticipating that the government would also receive an
16 unredacted version of the application for the meet and confer
17 or no?

18 THE COURT: I was not. I did not have a mind that you
19 would receive an unredacted version of the entire affidavit
20 before the meet and confer, but more discuss the general
21 categories of information that would be appropriate.

22 Mr. Habib, do you think a conversation could be had in
23 which, without showing parts that you think should be redacted,
24 they can be described in a way that a discussion could occur?

25 MR. HABIB: I think that's feasible, your Honor.

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1 MS. KIM: And the ultimate unredacted version would be
2 filed with the Court and also sent to the government after the
3 redactions are made, or would it be filed *ex parte*?

4 THE COURT: The unredacted version would be sent just
5 to me.

6 MS. KIM: Okay.

7 THE COURT: And then there probably will be a few
8 different ones after that. One, what's publicly filed, which
9 may be the proposed redacted version; it may be the unredacted
10 version, depending on what is being sought to be redacted and
11 whether I agree with that.

12 And I suppose it's also a possibility that I could
13 decide that certain materials should be redacted, but the
14 unredacted version should go to the government. That's a
15 possible scenario, but not having reviewed it, I can't say for
16 sure.

17 MS. KIM: Okay. And the second quick question was,
18 would the Court like for defense counsel to keep time records?
19 I know that was an issue that came up on December 2, and I just
20 wanted to reraise that now, now that new counsel has been
21 appointed.

22 THE COURT: Mr. Habib?

23 MR. HABIB: I would say it's not necessary only
24 because the Court, as I said, has made the determination of
25 eligibility. In our view, that determination was

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1 well-supported by the affidavit.

2 I think in light of the materials disclosed in the
3 affidavit, it's extremely unlikely that Mr. Cruciani will be
4 retroactively found ineligible or found to have assets that
5 would permit him to pay Federal Defenders in part for any of
6 these services or to pay the Court in part for any of these
7 services. And it would impose what will likely be a complex
8 case some burden on us in our office, and so I respectfully
9 suggest that's not necessary.

10 THE COURT: So I guess what I am wondering is if one
11 of the properties is only in Mr. Cruciani's name, and I'm not
12 sure if that's the case --

13 MR. HABIB: I think I know the answer exactly, but
14 it's escaping me at the moment whether that's public or not.

15 MS. KIM: It is public.

16 So it was discussed at the December 2 conference.
17 There is one property, the Jersey City property, that is under
18 the defendant's name, and I believe as well as the wife's name,
19 and that is securing the bond in this case and also in the
20 Manhattan DA Office's case, and so it's possible that property
21 could become available.

22 THE COURT: And that's what I wanted to ask you about,
23 Mr. Habib, if the bond did not require that property being
24 secured, he might not be eligible under the CJA. So if there
25 is a conviction and the bail is therefore lifted, would there

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1 be a scenario where – maybe this is for Ms. Kim – there would
2 be a request that that property be liquidated and used to pay
3 for cost of representation?

4 MS. KIM: I think that's possible, your Honor.

5 THE COURT: Okay.

6 MR. HABIB: Your Honor, obviously, we're several steps
7 away from that. I think I would want to look at the extent to
8 which a family residence is subject to liquidation for that
9 purpose. I don't know off the top of my head, but, for
10 example, there would be a homestead exemption and a bankruptcy,
11 I don't know whether a similar rule would apply. I wanted to
12 look at that before that occurred, obviously.

13 THE COURT: Right now, I'm not going to direct Federal
14 Defenders to keep time records. If the government thinks
15 there's a reason to do so, send me a submission and explain the
16 basis for it and any case law supporting it. But for now, I'm
17 not going to require the maintenance of records.

18 MS. KIM: Okay.

19 THE COURT: Let me ask. I entered a protective order
20 last week. Is there an update on the production of discovery?

21 MS. KIM: Yes. So there is one subpoena return that's
22 fairly substantial, and we have an outside vendor who's
23 processing and has finished Bates stamping that return. But
24 apart from that one return, the rest of discovery has been
25 produced and made available to the defense.

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1 THE COURT: Mr. Habib, I know you're not in a position
2 to talk about discovery, but have you heard any issues on your
3 end?

4 MR. HABIB: I haven't. I just haven't discussed
5 discovery with Mr. Gombiner. I apologize for that.

6 THE COURT: Certainly. It's understandable.

7 MR. HABIB: What I would say is I believe Mr. Cruciani
8 was saying to me earlier that the state court trial is now
9 scheduled to go forward on March 21 for jury selection and
10 March 29th for the presentation of evidence. So the Court can
11 take that into account when setting a next date in this matter.

12 THE COURT: Yes.

13 MS. KIM: Your Honor, I believe the next date has
14 already been set for April 19th. Just given our understanding
15 of what we've seen with state court cases regularly being
16 adjourned because of the pandemic, we would ask that if there's
17 any adjournment of that date, we submit a request to the Court,
18 or the defense submit a request to the Court before that April
19 date.

20 THE COURT: Okay. Mr. Habib, if you ask Mr. Gombiner
21 to keep me and Ms. Kim apprised of whether that March trial
22 date goes forward for now, but we'll keep the April 19th
23 conference. I believe it's April 19th at 9:30, but it would be
24 good to know what's going on with that case.

25 MR. HABIB: Of course.

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1 THE COURT: We went pretty long and covered a lot. Is
2 there anything further we should address?

3 MS. KIM: Not from the government, your Honor. Thank
4 you.

5 THE COURT: Mr. Habib?

6 MR. HABIB: I have one question, which I think I'm
7 ethically required to advise Mr. Cruciani that he is entitled
8 to take an interlocutory appeal of the Court's ruling. I think
9 *Suarez* is one case, for example, that discusses that such an
10 order is appealable pursuant to the collateral order doctrine.

11 If Mr. Cruciani decide he wants to pursue the appeal,
12 I guess I would ask what the Court's view would be on staying
13 unsealing pending disposition of the appeal, which appears was
14 the course followed in *Suarez* itself.

15 THE COURT: So right now the timeline we have set for
16 you to report back to me in four weeks should give you time to
17 figure out if an appeal is going to be sought. If there is,
18 then I would say make an application Thursday. But I think we
19 can hold off on addressing that to see if an interlocutory
20 appeal is sought.

21 MR. HABIB: I think it would most likely be a 14-day
22 notice of appeal, so you're right about that.

23 THE COURT: Okay. Anything further from the defense,
24 then?

25 MR. HABIB: No, your Honor.

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1 THE COURT: From the government?

2 MS. KIM: No, your Honor. Thank you.

3 THE COURT: Thank you, all. Have a good rest of the
4 day. Take care.

5 (Adjourned)

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